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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,703	01/15/2004	Robert E. Platt	1522006US1AP	8439
27542	7590	12/20/2005		
SAND & SEBOLT AEGIS TOWER, SUITE 1100 4940 MUNSON STREET, NW CANTON, OH 44718-3615			EXAMINER CHAPMAN, JEANETTE E	
			ART UNIT 3635	PAPER NUMBER

DATE MAILED: 12/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/759,703	PLATT, ROBERT E.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chapman E. Jeanette	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 23-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 and 26-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 8 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8 has no clear meaning.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 26-28 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Von Arx (2554135).

Arx discloses a post leveling assembly comprising:

1. a base 10 mounted to a post 72
  - a. the base includes
    - i. top edge
    - ii. bottom edge
    - iii. front surface
    - iv. back surface
    - v. an aperture 48 proximate the top edge

2. at least one arm 54 mounted to the base
3. the arm is mounted onto the base by a pin 44 that is received in the aperture 48
4. the said arm pivots freely in response to movements of the post; the spherical element 44 is mounted for universal movement in the recess 42.
5. An indicator 62 on the arm comprises
  - a. A V shape lower end of the arm that terminated in an apex and wherein the apex aligns the marker when the post is vertical and does not align with the marker when the post is not vertical. See below.
6. a marker 64/66/69 disposed on the base comprises
  - a. a detent 68 that projects from the front surface of the base
    - i. a second apex
  - b. a groove or a ridge
7. alignment of the indicator with said marker indicates that the post is vertical
8. nonalignment of the indicator with the marker indicates that the post is not vertical; see claims 1 and 2 and column 2, line 27 through column 3, line 10
9. the apex of the arm aligns with the apex of the detent when the post is vertical and does not align when the post is not vertical
10. The base includes another aperture near ref no 74 in figure 3 and this perture extends from the front to the back surface

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arx in view of Hunter (6370784) and Elasser (6467756). Arx shows the post leveling assembly is permanently mounted to the post but lacks the post with a core and a removable sleeve and the post leveling assembly permanently mounted onto the core. Elasser discloses a post 15 with a core 14 and a sleeve 16 which may be removed upon removing the nail 19. Hunter discloses a post (wellbore casing) with a core 8 and a removable sleeve 10 and the leveling assembly 2/4/6 permanently mounted onto the core 8. In view of the above it would have been obvious to one of ordinary skill in the art to modify Arx to include the level indicator inside the post for the convenience of the use in selling the indicator and post as a single unit.

Claims 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arx in view of Foss et al (5956855).

Color coding is common on many mechanical devices. The purpose and function of color coding does not change when used on various objects. One of ordinary skill in the art would have appreciated using any indication means which was or is commensurate with the purpose and function of the indicator. Foss discloses a level indicator using color coding. Foss does not disclose the marker of one color and the arm, marker and base of different and strongly contrasting colors. One of ordinary skill

in the art would have appreciated using color coding in any manner commensurate with the function and purpose of the indicator device.

Claims 11-13, 16-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arx in view of Gruetzmacher (5207004) and Elasser. Arx lacks the base member which is L shaped in cross section and the member is adapted to receive a corner of a substantially rectangular or square post in the apex of the L shape. Elasser discloses a square post and Gruetzmacher discloses a post level with an L-shaped base. The base has two legs disposed perpendicular to one another and includes a level indicator on each leg. Each leg has front and back surface and the back surface abuts the post. Each leg has an aperture 62/64 extending inwardly from the front to the back surface. It would have been obvious to one of ordinary skill in the art to modify Arx to include a square post as suggested by Arx himself and taught by Elasser and to include the L shaped base accommodating two level indicators as taught by Gruetzmacher in order to be able to read the indicator from more than one side or angle. It is clear with the above modification of Elasser and Gruetzmacher the indicator of Arx would now include two arms and two markers as the indicator on both legs of Gruetzmacher include identical structures.

Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arx in view of Elasser and Gruetzmacher and further in view of Hunter. See above for the how the references are applied to Arx. Arx discloses his base connected to the post by a screw or nail since the screw hole is shown. One of ordinary skill in the art would

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have appreciated connecting the base to the core by any suitable and well known securing means such as screws.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Arx in view of Gruetzmacher (5207004) and Elasser as applied to claim 11 and further in view of Foss et al.

Claims 23-25 have been withdrawn as not being directed to the elected invention

Claims 29-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arx in view of Gruetzmacher (5207004) and Elasser. Gruetzmacher discloses an indicator with two legs with an indicator and a third indicator for alignment to show the verticalness of the post. It would have been obvious to one of ordinary skill in the art to include the all three indicators in order to provide a range of readers to ensure a perfectly upright post as taught by Gruetzmacher.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chapman E. Jeanette whose telephone number is 571-272-6841. The examiner can normally be reached on Mon.-thursday, 8:30-6:00, every fri. off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Friedman Carl can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Jeanette Chapman  
Primary Examiner